

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

TUESDAY, THE 22ND AUGUST 2006 / 31ST SRAVANA 1928

ST.Rev..No. 261 of 2004

TA.454/1997 of S.T.A.T.ADDL.BENCH II, ERNAKULAM

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REVISION PETITIONER/RESPONDENT/REVENUE

**STATE OF KERALA, REPRESENTED BY
THE DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.**

BY GOVERNMENT PLEADER (SHRI V.V. ASOKAN)

RESPONDENT/ APPELLANT/ASSESSEE

**M/S.CHEMICAL INDIA ENTERPRISES,
KANJIRAKKAD, PERUMBAVOOR, UDYOGAMANDAL.**

**BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.FRANKUR D.JAYAN
SMT.DEEPSUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI**

**THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 22/08/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

**C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.**

S.T.REV. NO. 261 OF 2004

Dated this the 22nd day of August, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

This S.T. Rev. is filed by State challenging the order of the tribunal holding that respondent/assessee is not liable to be assessed at the higher rate of tax on the sale of ammonia to a rubber processing industry for conversion of field latex into centrifuged latex which is held to be not a process of manufacture by the Full Bench of this Court in the decision in Kurian Abraham Pvt. Limited v. Assistant Commissioner (Assmt) II, Special Circle, Kottayam ((2004) 137 STC 237). Benefit of concessional rate of tax on sale of industrial raw-material is available only when purchaser manufactures a finished product with the item purchased and sells the same remitting tax on the product. Since centrifuged latex is only a form of rubber, the purchaser was not entitled to claim concessional rate based on the Full Bench decision referred

above. In such circumstances, respondent/assessee is not entitled to benefit of concessional rate of tax under Section 5(3) of the KGST Act. The Full Bench decision of this Court was rendered after the impugned order of the tribunal. In the circumstances and in view of the above decision, we allow the S.T. Rev. Case, reversing the order of the tribunal and restoring the order of the Deputy Commissioner under Section 35 of the KGST Act, directing assessment of assessee's turnover at usual rate of tax. However, this Judgment will not stand in the way of the respondent/assessee claiming differential rate of tax from purchasers based on contract between the parties.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.